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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-245

FRANK T. BARR, et al.,

Plaintiffs,

VS.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

REPLY BRIEF OF PETITIONERS

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PETITIONERS' REPLY BRIEF

The Petition for Writ of Certiorari in this case asks the Court to consider whether, in view of its diffuse organization, absence of central direction, and lack of common funds, the United Methodist Church may be required by a state to defend a suit for damages as though it were an entity, under an "unincorporated association" statute, or whether such an action may be brought only against the separate jural units which make up the denomination. The Petition urges that to require the denomination to be treated as an entity offends the guarantees of both due process and free exercise of religion.

The brief which respondents have filed in opposition to certiorari, at the Court's request, addresses these issues only obliquely. The brief primarily argues fraud, deception, and collusion by United Methodism—assertions gen-

erated outside of the record—which respondents believe entitle them to a large recovery against their chosen litigation target. These extreme assertions which have recently received increased media attention, are wholly false. Aside from their falsity, however, they do not answer the issues presented to this Court. Indeed, respondents' brief serves to demonstrate again that this Court's review is critically necessary at this time.

I.

RESPONDENTS HAVE CONCEDED THE FINALITY OF THE DECISION BELOW.

In opposing a motion for stay of the state court proceedings, respondents previously argued that the decision requiring the United Methodist Church to litigate as an entity was not a final one. Opposition to Application for Stay Pending Review on Certiorari (June 18, 1979) at 41. Now, without explanation, and in a footnote, respondents have explicitly conceded finality. Resp. Br. at 9, n. 12. Yet, to concede finality in the posture of this case is to recognize the appropriateness of an immediate review of important federal questions. See *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 476-87 (1974).

The Petition for Certiorari (pp. 34-35) points out that the question whether all of United Methodism is suable as a monolith cannot effectively be reviewed after a final judgment, because the state courts may require the denomination to waive the capacity question in order to avoid entry of a default. *McCorkle* v. *City of Los Angeles*, 70 Cal. 2d 252, 257-58, 449 P.2d 453 (1969). Indeed, respondents sought entry of such a default during the pendency of this petition just as they have pursued a default judgment in the related *Trigg* case, also pending on Petition for Writ of Certiorari. See Supplemental Statement and Brief of Petitioners (gray cover) at 1-2; also, Supplemental Statement and Reply Brief in *Trigg* (red cover) at 1-2. By

these actions and by their present concession of finality, respondents have made clear their belief that this Court can review the questions raised by the petition only if it does so now.

II.

RESPONDENTS' BRIEF ILLUSTRATES THE DENIALS OF DUE PROCESS WHICH SUIT AGAINST THE DENOMINATION WOULD IMPOSE.

The keystone of respondents' case in the California Court of Appeal was their advocacy of a "common purpose-common name" test for conferring legal entity status on a gathering sought to be sued as an entity. That court adopted respondents' theory and applied it to the entire United Methodist denomination. 90 Cal. App.3d at 266; App. A. to Pet. for Cert. at A-8, 9. The Court of Appeal further stated that the meaning of "unincorporated association" was solely a legal question, the only issue to be determined —that the relevant facts were not in dispute. 90 Cal.App.3d at 264; App. A. to Pet. for Cert. at A-5. Nevertheless, respondents now appear to have abandoned the "common purpose-common name" test which they originated. In response to petitioners' arguments (Pet. for Cert. at 22-23) that this rule is without precedent and would lead to absurd and manifestly unfair consequences in litigation, respondents offer not a word of defense.[1]

Nor do respondents seriously address the three specific areas in which due process is offended, in the present case, by requiring the United Methodist Church to litigate as an entity.

1. *Inability to Conduct Litigation.* The denomination has no central executive capable of speaking for or directing

[1] Instead, respondents seek to rely upon the "facts" found by the Court of Appeal, even though California law requires acceptance of the trial court's findings, which were in petitioners' favor and resulted in dismissal of the United Methodist Church.

its 45,000 jural units and 10 million members. See App. F to Pet. for Cert. at A-28 to A-39. For this reason, petitioners have argued that the collective denomination, as a practical matter, cannot consult with counsel, respond to widespread discovery, enter into stipulations, or otherwise engage in litigation in a meaningful way. Pet. for Cert. at 26-27. Respondents fail to explain how a defense could be conducted in this case.

The fact that the United Methodist Church has been categorized as hierarchial for purposes of resolving local church property disputes (Resp. Br. at 18-19) has no bearing on the separate issue of whether it has a central executive capable of conducting litigation. Thus, in *Clay* v. *Crawford,* 298 Ky. 654, 183 S.W.2d 787, 800 (1944), the Kentucky Court of Appeals found that while all the units of the Methodist Church are "parts of an ecclesiastical system," the denomination's form of government is "connectional . . . with the congregations acting through local officers having a considerable degree of autonomy in secular matters."

Respondents' suggestion (Resp. Br. at 20) that the denomination's General Council on Finance and Administration (GCFA) can act as a central litigation agent is simply unsupportable. GCFA, like all other constituent units of the denomination, is without power to speak or act for the denomination as a whole. See Pet. for Cert. at 26. Its occasional reimbursement of the legal expenses of United Methodist units or officials, including the present petitioners, does not contradict this limitation, nor does it make the entire denomination a jural entity. It would be totally inconsistent with GCFA's traditional function and authority to become a litigation agent by appearing for the entire connection of United Methodism, over which it has no control, and for which it has no right to speak. See Decision No. 458 of Judicial Council of United Methodist Church, App. E to Pet. for Cert. at A-27.

Finally, respondents' startling assertions (Resp. Br. at 20-21) that a special session of the General Conference could be called to organize a defense of the denomination would involve precisely the sort of forced reorganization of a religious system that the First Amendment forbids. See pp. 9-10, *infra*. Although all of its constituent units are fully amenable to suit and capable of defending themselves, the composite United Methodist denomination, as it has been organized for the past 200 years, cannot, in fact, respond as an entity to a damage action.

2. *Adjudication In Absentia.* Because the denomination does not hold any common "associational" assets, petitioners have pointed to a second due process denial: judgment against the denomination could be enforced only against the property owned by the separate units within the denomination, all but four of which are not parties. The thousands of unnamed units, after any judgment against the denomination, would be subject to satisfaction proceedings in which it would be alleged that their properties were held by them as agent or *alter ego* of the United Methodist denomination. The issues of liability would have long before been concluded in their absence. Pet. for Cert. at 23-24. Respondents reply that this concern is premature (Resp. Br. at 10), in effect urging a course of "litigating now and determining later" who are the objects of suit. Yet the present danger of judgment *in absentia* must be considered. If respondents are not seeking to enforce a judgment against assets owned by separate units of the denomination, there would be no reason for their joining the denomination as a party. In fact, by coyly denying (Resp. Br. at 11) that they are seeking recovery against the ten million *individual members* of the denomination (a proposition not asserted by petitioners), respondents clearly imply a strategy of collecting from the denomination's annual conferences, general boards, and other units which bear the denominational name.

3. *Prejudgment.* Respondents themselves have demonstrated the third due process denial implicit in making the United Methodist Church a party defendant in this action: that critical factual allegations of agency and *alter ego* will be prejudged. The respondents argue that the entire denomination must be made a party because the four [redacted] incorporated denominational units named as defendants have denied responsibility for the financial difficulties of Pacific Homes. Resp. Br. at 17-18. Respondents apparently seek judgment against the denomination as an alternative to proving that the four defendant units were responsible for contracts of Pacific Homes. Thus, in a recent colloquy in the trial court, respondents' counsel, in response to the court's question about the application of his *alter ego* allegation to one of the four religious units named as a defendant, announced his reliance upon a sort of "seamless web" theory: "[T]he UMC is an integrated ecclesiastical religious situation [sic], of which its subordinate parts are part of one whole, under central denomination and control." Tr. of Proceedings, Oct. 23, 1979, at 64. This fusing of a vast connection of separate units into a single party defendant portends grave difficulties in the context of respondents' vicarious liability claims against defending religious units. If the denomination is forced to appear before a jury as a unified entity, in the very act of litigating as a party, the traditional distinctions between separate jural units would be blurred, providing escape from the need for proof of agency and control.[2]

Respondents do not need to force the United Methodist Church into the case as a defendant in order to accomplish any legitimate litigation aim. They will not be precluded,

[2] In *Roman Catholic Archbishop of San Francisco* v. *Superior Court*, 15 Cal. App. 3d 405 (1971), the California Court of Appeal would not sanction an "indivisible whole" theory asserted against the Roman Catholic Church. Respondents' claims should be subject to the same standard.

absent the denomination as a defendant, from obtaining any discovery, since the denomination as such holds no documents and has no officers. Its units and their officers are all separately discoverable and many have been subjected to discovery, producing large volumes of documents. Reniche Affidavit dated June 7, 1979, at 5. Nor will respondents be precluded from showing (if it be true) that any given unit within the denomination directed, approved, ratified, had knowledge of, or was otherwise responsible for the financial activities of Pacific Homes. The absence of the denomination will simply deprive respondents, as due process requires, of a default judgment against a defendant unable to represent itself.

III.

RESPONDENTS' BRIEF ILLUSTRATES THE RESTRAINTS ON THE FREE EXERCISE OF RELIGION WHICH THE DECISION BELOW WOULD IMPOSE.

Respondents have denied that the decision below presents any affront to the First Amendment guarantees of religious freedom. They label this case as a "purely secular dispute." Resp. Br. at 1, 13. In so doing, they fail to recognize that because an appraisal of United Methodist polity is necessary for determining whether the denomination is a suable unincorporated association, this case involves an essentially religious inquiry. While petitioners have never sought rubber-stamp acceptance of their experts' interpretations, they have said that, in a case which involves important questions of ecclesiastical polity, respondents' failure to support their contentions with religious expertise invites constitutional error. See Pet. for Cert. at 36-37. Such error, in the form of unassisted judicial interpretation of sensitive ecclesiastical questions, is presented here. The result is the imposition on the United Methodist Church of a unified authoritarianism which it has never adopted and which is contrary to its self-understanding.

Respondents continue their practice of depicting the denomination's organization according to their own unsupported interpretation of church documents. Thus, for example, respondents repeatedly imply central control by advising this Court (Resp. Br. at 1, 17, 18) that contracts with the residents of Pacific Homes were made "in the name of the United Methodist Church." These statements are false. Plaintiffs have not produced, nor could they ever produce, any life care or other contract containing language even implying such a relationship. All contracts were made solely with Pacific Homes, a California not-for-profit corporation.

Similarly, respondents suggest (Resp. Br. at 5) that one unit of the denomination, the Health & Welfare Certification Council, has the power to give or withhold permission for a local institution to use the name "The United Methodist Church." The Council has no such power, nor does any other unit in the denomination. (Deposition of Charles Frazier at 40, 43.) There are numerous homes, hospitals and other institutions in Annual Conferences which have not sought "affiliation" or "certification" status, which cannot be mandated to do so, and, nevertheless, freely identify themselves as United Methodist related activities.

Respondents' claim (Resp. Br. at 5) that "the UMC has vigorously protected its 'Methodist' trademark" is also a misstatement. First, "The United Methodist Church" is certainly not a registered trademark. Second, respondents have again resorted to their technique of describing any action by a local unit as that of "UMC." It was GCFA which attempted by letter to persuade a commercial insurance company to desist from describing itself as the "United Methodist Church Insurance Program." This brief exchange of correspondence between a unit of the denomination and an insurance company is hardly tantamount to a "UMC"

practice of "vigorously protect[ing] its trademark" or evidence of entity status.

Respondents' misinterpretation of church documents is, however, only a predicate to the radical imposition they propose—a total restructuring of United Methodist polity. Their brief asserts (Br. at 20-21):

> "[T]he General Conference can act to defend the UMC's interests. The Council of Bishops, which is charged with 'oversight of the . . . temporal affairs of the whole Church', can convene special sessions of the General Conference of the UMC. Thus, even under petitioners' view, the mechanics exist for conducting a defense of the UMC." (Citations omitted.)

Respondents apparently suggest, in response to their naming the whole denomination as a defendant, that (1) the Council of Bishops must call an extraordinary General Conference, assembling delegates from around the world, (2) the General Conference, in turn, must propose a constitutional amendment creating a centralized church with power to speak and act for all its members and constituent units and to direct their conduct, and (3) the 114 annual conferences must meet and approve this amendment. All this could be done, even to the point of amalgamating the entire connection into a single corporation. The denomination could, by the procedures suggested by respondents, abandon any of its historic choices and tenets. But for a state to force such changes in the basic polity of a religion is obviously forbidden by the First Amendment. "Religious freedom encompasses . . . matters of church government as well as those of faith and morals." *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952).

Since respondents can fully litigate their claims against the individual units of the denomination, the imposition on religious freedom which they propose should not be countenanced. *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972).

IV.

RESPONDENTS' DIVERSIONARY ASSERTIONS OF FRAUD ARE BOTH UNFOUNDED AND IRRELEVANT.

Respondents' brief sets forth in detail what they take to be a conspiracy on the part of United Methodism to defraud the elderly. Resp. Br. at 3-7. Respondents allege, in effect, that the millions of individuals and thousands of Church units which have made up the denomination for the past twenty-five years were engaged during that period in a concerted effort to profit by bilking old people; that victims were lured by promises of a "Methodist" Home, deprived of their life savings, and then left destitute and homeless. These outrageous charges are wholly false, and wholly unsupported by any material in the record of this case.

In fact, discovery indicates that the Methodist affiliation of Pacific Homes influenced the decision of very few residents to enter the Homes. Over three-fifths of the residents were not Methodists. No one has been required to leave the Homes for want of funds, due to an emergency relief fund established by concerned United Methodists of the Pacific and Southwest Annual Conference. Aff. of Randall Phillips dated June 12, 1979. Moreover, that Conference, with which the Homes have been affiliated for many years, has made extraordinary financial sacrifices in an effort to stabilize the Home's finances, including loan guarantees of $12 million, and a Chapter XI plan of arrangement offering to raise an additional $9 million. This plan was approved by 91% of the residents of the Homes who voted on it, and was not put into effect largely because of fraud claims filed in the Bankruptcy Court by respondents' counsel. Documents on file in "In Re Pacific Homes", Bankruptcy file No. 77-01667 (C.D. Calif.).

Lacking basis in the record in order to make their charges of fraud, respondents were required to quote at length from

a recently issued report by one whom they assert to be the "independent" Chapter X trustee of the Homes. Resp. Br. at 7. The trustee, however, is anything but independent. He is the plaintiff in his own $50 million fraud action against the United Methodist Church and has been allied closely with the respondents herein. His theory of action against the denomination as an "unincorporated association" is identical to that advanced by respondents. He relies largely on their discovery, as he conceded in the bankruptcy court. Plaintiffs' Consolidated Memorandum of June 22, 1978, filed in Bk. No. 77-01667, at 35-36. The trustee thus has a substantial personal stake in establishing both that the denomination may be sued as an unincorporated association and that it was guilty of wrongdoing. His report, rather than recounting developments in the reorganization of the homes, is devoted almost entirely to assailing all of United Methodism. While venting these scandalous charges, however, the trustee recognized the absence of actual proof with his disclaimer that "no factual information is to be construed as a representation." Trustee's Report, at 6.

Respondents' assertions, in any event, have nothing to do with the question of whether the United Methodist Church should be pressed into the mold of a litigating entity in this action; and hence such assertions have no place before this Court. These claims, presumably, will be aired at trial, subject to proof, if any, and cross-examination. At trial, and not here, those who were responsible for the operation of Pacific Homes will respond by showing the compassion and concern of United Methodists for the elderly. Here, petitioners simply ask that the trial not be conducted in a manner fundamentally unfair to the many individuals and jural units that make up United Methodism, or under a procedure which would require them to alter the fundamental nature of their Church.

CONCLUSION.

For the reasons stated above and in the Petition for Certiorari filed herein, petitioners respectfully request that the writ be granted.

Respectfully submitted,

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